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JUL 13 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

July 13, 1993

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Mr. William F. Caton
Acting Secretary

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

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JUL 13 1993
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of)	MM Docket No. 93-178
)	
HOWARD B. DOLGOFF and)	File No. BPH-911223ME
)	
MARK AND RENEE CARTER)	File No. BPH-911224MD
)	
For a Construction Permit For a)	
New FM Radio Station on Channel)	
292A in Miramar Beach, Florida)	

TO: The Commission

MOTION TO STRIKE

HOWARD B. DOLGOFF ("Dolgoff"), by his attorneys, hereby respectfully moves to strike, without any consideration whatsoever, the July 8, 1993 letter to Chairman Quello from Mr. Hugh Ellington, President of Ellington Radio, Inc., licensee of Radio Station WKNU(FM), Brewton, Alabama, concerning Dolgoff's above-captioned pending application in this proceeding. In support whereof, it is shown as follows:

On July 8, 1993, undersigned counsel for Dolgoff received from WKNU(FM) a facsimile transmission of a copy of a letter dated July 8, 1993 from Mr. Hugh Ellington to Chairman Quello concerning Dolgoff's above-captioned Miramar Beach, Florida, application. For convenience, a photocopy of Mr. Ellington's July 8, 1993 letter to Chairman Quello is annexed hereto as Attachment 1.

In his letter Mr. Ellington takes issue with the

[REDACTED]

designation, in attempting to seek the dismissal of Dolgoff's application, and his July 8, 1993 correspondence to the Chairman appears to seek the Chairman's intervention in an on-the-record hearing proceeding which is pending before an Administrative Law Judge.

Under Section 0.341(a) of the Commission's Rules, after an Administrative Law Judge has been designated to preside at a hearing and until he has issued an initial decision or certified the record in a hearing case to the Commission for decision, or until the proceeding has been transferred to another Administrative Law Judge, all motions, petitions and other pleadings in the proceeding must be acted upon by that Administrative Law Judge, except for those matters which are to be acted upon by the full Commission under Section 1.291(a)(1) of the Commission's Rules, and except for those matters which are to be acted upon by the Chief Administrative Law Judge under Section 0.351 of the Commission's Rules. In light of the foregoing, any intervention by the Chairman, or even by the full Commission acting en banc, in the Miramar Beach hearing proceeding in the manner suggested by Mr. Ellington would be wholly inappropriate.

In light of all the foregoing, it is respectfully requested that the Commission summarily strike Mr. Ellington's July 8,

1993, correspondence to the Chairman without any consideration whatsoever.

Respectfully submitted,

HOWARD B. DOLGOFF

By:


Irving Gastfreund

Kaye, Scholer, Fierman, Hays &
Handler
The McPherson Building
901 15th Street, N.W.
Suite 1100
Washington, D.C. 20005

His Attorneys

July 13, 1993

Attachment 1

WKNU_{FM}

P. O. Box 468 • Brewton, Alabama 36427 • Phone (205) 867-4824 • 106.3 MHz • 3000 WATTS H & V

July 8, 1993

Chairman James H. Quello
July 8, 1993
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Please be advised that WKNU strongly objects to the staff action. I hereby call upon the Commission to reject Mr. Dolgoff's application as patently in violation of the Commission's rules.

Respectfully submitted,

A handwritten signature, likely of James H. Quello, is written over the closing "Respectfully submitted,". The signature is in cursive and appears to read "J. H. Quello".

CERTIFICATE OF SERVICE

I, Mary Odder, a secretary with the law firm of Kaye, Scholer, Fierman, Hays & Handler, hereby certify that on this 13th day of July, 1993, have caused a copy of the foregoing "Motion To Strike" be hand-delivered or to be sent via first-class United States mail, postage prepaid, to the following:

Chairman James H. Quello*
Federal Communications Commission
1919 M Street, N.W.
Room 802
Washington, D.C. 20554

Commissioner Andrew C. Barrett*
Federal Communications Commission
1919 M Street, N.W.
Room 826
Washington, D.C. 20554

Commissioner Ervin S. Duggan*
Federal Communications Commission
1919 M Street, N.W.
Room 832
Washington, D.C. 20554

John I. Riffer, Esq.*
Associate General Counsel - Adjudication
Adjudication Division
Office of the General Counsel
Federal Communications Commission
1919 M Street, N.W.
Room 610
Washington, D.C. 20554

Brian F. Fontes, Esq.*
Chief of Staff
Office of Chairman James H. Quello
Federal Communications Commission
1919 M Street, N.W.
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Washington, D.C. 20554

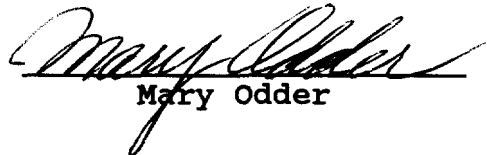
Honorable John M. Frysiak*
Administrative Law Judge
Federal Communications Commission
2000 L Street, N.W.
Room 223
Washington, D.C. 20554

Paulette Laden, Esq.*
Hearing Branch, Enforcement Division
Mass Media Bureau
Federal Communications Commission
2025 M Street, N.W.
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Counsel for Mark and Renee Carter

Mr. Hugh Ellington
President
Ellington Radio, Inc.
Radio Station WKNV(FM)
P.O. Box 468
Brewton, Alabama 36427


Mary Odder

*/ Via Hand-Delivery